

REMARKS

In the Office Action of May 17, 2004, claims 1-15 were rejected under § 112 as being indefinite because of the recitation of “fan means” in claims 1, 12 and 14 without an accompanying function. These claims were not intended as means-plus-function claims. Accordingly, this objection has been overcome by deleting the term “fan means” and replacing it with the term “at least one fan”. The Examiner also suggested adding the word “and” in claim 14 prior to the final claimed feature. This has been done. With these changes, it is believed the rejections under § 112 have been overcome and reconsideration is respectfully requested. Independent claim 14, and thus dependent claim 15 have also been amended by changing “pre-flight” in line 1 to - - free fall - - to be consistent with the disclosure.

With the above amendments to independent claim 14, claim 14 and its dependent claim 15 are now in condition for allowance. Therefore, formal allowance is respectfully requested.

Independent claim 1 was rejected under § 102(b) as being anticipated by Kitchen Patent No. 6,083,110. The Kitchen ‘110 patent has been carefully considered with reference to claim 1. Applicants respectfully disagree with this rejection for the reason below.

A § 102(b) rejection based on anticipation requires the cited reference to disclose each and every element and limitation in the claim. As currently amended to overcome the § 112 rejection, independent claim 1 requires at least one fan “positioned below said flight chamber” (emphasis added). The Examiner’s position is that the Kitchen ‘110 patent in Figures 18 and 19 and in column 11, line 24 to column 12, line 6, discloses a fan positioned below the flight chamber. This is not true. In the embodiment of Figures 18 and 19, and as shown in Figure 18, the fans 270 and 280 are positioned above the flight chamber. The element 170 which is positioned below the flight chamber is actually an anti-vortex device 170 which is designed to prevent the formation of undesirable vortices or “tornadoes” in the inlet to the flight chamber (see column 5, lines 37-39). Such anti-vortex device is shown more specifically in Figures 5, 6 and 7. Even the embodiments of Figure 1, Figure 2 and Figure 14 show the fans 270 and 280 positioned above the flight chamber and the anti-vortex device 170 positioned below the flight chamber.

Accordingly, because the Kitchen ‘110 patent fails to disclose or suggest a fan or fan means positioned “below” the flight chamber, the rejection of claim 1 under § 102(b) has been overcome.

Further, it would not have been obvious to modify the structure of the Kitchen '110 patent by providing fans below the flight chamber. Such a structure would be inconsistent with the teachings and disclosure of the Kitchen '110 patent in that it would obviate the anti-vortex device 170 and various other important structural features. Accordingly, independent claim 1, and its respective dependent claims, is patentably distinct from the Kitchen '110 patent, both under § 102 and under § 103.

Dependent claims 2-5 were also rejected under § 103 as being unpatentable over the Kitchen '110 patent. The Examiner's focus appears to have been on the requirement in claims 2-5 of a "canopy". The Examiner's position is that the structure disclosed by Kitchen appears to bear some resemblance to a canopy. However, whether *Kitchen* is considered to disclose a canopy or not, claims 2-5 depend from claim 1 and thus require at least one fan "positioned below said flight chamber (emphasis added). Accordingly, for the same reasons as discussed above with respect to independent claim 1, dependent claims 2-5 are not obvious in view of the Kitchen '110 patent and their allowance is respectfully requested.

Claims 6-13 were rejected under § 103 as being unpatentable over *Kitchen* in view of the McManus Patent No. 4,578,037. Here the Examiner's position is that *Kitchen* discloses or suggests all of the limitations of the claims with the exception of a fan being located in each air intake duct and that *McManus* discloses a plurality of air ducts with a fan located in each air duct. Again, however, this rejection is based on the incorrect premise that the Kitchen '110 patent discloses a fan below the flight chamber. As discussed above, it does not. Accordingly, *Kitchen* and *McManus* would not be combinable as suggested by the Examiner. Accordingly, claims 6-13 are allowable over this combination of references.

Applicant is also providing an Information Disclosure Statement under 37 C.F.R. § 1.97(b). Included in these disclosed documents are Exhibits A, B, C and D and a Declaration of Donald Kamis, Vice President, Wind Tunnel Marketing, of Aero Systems Engineering, relating to such exhibits. Based on the Declaration of Mr. Kamis, these documents are not publications and do not evidence the subject matter therein as being sold or on sale.

Accordingly, it is believed that all of the claims now in the application have either been allowed or are in condition for allowance. A formal Notice of Allowance with respect to all claims is respectfully requested.

Respectfully submitted,

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